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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 HP TUNERS, LLC,

9 Plaintiff,

v.

10 KEVIN SYKES-BONNETT, et al.,

11 Defendants.

CASE NO. C17-5760 BHS

ORDER DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

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13 This matter comes before the Court on Defendant John Martinson's ("Martinson")  
14 motion for summary judgment. Dkt. 183. The Court has considered the pleadings filed  
15 in support of and in opposition to the motion and the remainder of the file and hereby  
16 denies the motion for the reasons stated herein.

17 **I. PROCEDURAL HISTORY**

18 On September 20, 2017, Plaintiff HP Tuners, LLC ("HP Tuners") filed an  
19 amended complaint against Martinson and Defendants Syked ECU Tuning Incorporated  
20 ("Syked") and Kevin Sykes-Bonnett ("Sykes-Bonnett") asserting (1) violations of the  
21 Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (2) violations of the Defend Trade  
22 Secrets Act, 18 U.S.C. § 1836; (3) violations of the Washington Uniform Trade Secrets

1 Act, RCW Chapter 19.108; (4) violations of the Illinois Trade Secrets Act, 765 ILCS  
2 1065/1, *et seq.*; (5) unfair competition under the Washington Consumer Protection Act,  
3 RCW Chapter 19.86; (6) unfair competition under the Illinois Consumer Fraud and  
4 Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*; (7) breach of contract; and (8)  
5 tortious interference with prospective contractual or economic relations. Dkt. 35.

6 On July 31, 2019, Martinson filed a motion for summary judgment. Dkt. 183. On  
7 September 3, 2019, HP Tuners responded. Dkt. 190. On September 6, 2019, Martinson  
8 replied. Dkt. 193.

9 On September 18, 2019, HP Tuners filed a motion for leave to file a supplemental  
10 response brief and evidence. Dkt. 203. On September 30, 2019, Martinson responded.  
11 Dkt. 211. On October 4, 2019, HP Tuners replied. Dkt. 213. On October 9, 2019, the  
12 Court granted HP Tuners's motion and renoted Martinson's motion to October 18, 2019.  
13 Dkt. 225. On October 10, 2019, HP Tuners submitted its supplemental evidence. Dkt.  
14 228. On October 18, 2019, Martinson filed a supplemental reply. Dkt. 230.

## 15 II. FACTUAL BACKGROUND

16 HP Tuners is a Nevada limited liability company that "provides complete, cost  
17 effective automotive tuning and data acquisition solutions for enthusiasts and  
18 professional shops." Dkt. 35, ¶¶ 5, 12. HP Tuners's "business includes but is not limited  
19 to computer hardware and software designed for use in custom and/or pre-programmed  
20 engine and transmission tuning and calibration applications for automobiles, trucks and  
21 other types of vehicles (including but not limited to ATVs, snowmobiles and  
22 watercraft)." Dkt. 189, ¶ 6.

1 Sykes-Bonnett, owner of Syked, asserts that he formed Syked in 2014 after  
2 independently developing a software program to tune cars. Dkt. 182-1, ¶ 2. Sykes-  
3 Bonnett declares that his program was developed long before HP Tuners claims he  
4 received a copy of HP Tuners's code. *Id.* ¶ 2. He declares that, although his code has  
5 undergone revisions, the alterations were based on third-party software and not HP  
6 Tuners's code. *Id.* ¶¶ 4–5.

7 Martinson is an owner and officer of Syked. Dkt. 147-2 at 10–11. Martinson does  
8 not dispute that he is the CFO of Syked and worked as an engineer for Syked writing  
9 code and developing Syked products. Dkt. 193 at 2–3. HP Tuners alleges that Martinson  
10 was personally involved in the various improper actions that form the basis for its eight  
11 claims in the amended complaint. Dkt. 35, ¶ 3.

### 12 III. DISCUSSION

#### 13 A. Summary Judgment Standard

14 Summary judgment is proper only if the pleadings, the discovery and disclosure  
15 materials on file, and any affidavits show that there is no genuine issue as to any material  
16 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
17 The moving party is entitled to judgment as a matter of law when the nonmoving party  
18 fails to make a sufficient showing on an essential element of a claim in the case on which  
19 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
20 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,  
21 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*  
22 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must

1 present specific, significant probative evidence, not simply “some metaphysical doubt”).  
2 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists  
3 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or  
4 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477  
5 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d  
6 626, 630 (9th Cir. 1987).

7       The determination of the existence of a material fact is often a close question. The  
8 Court must consider the substantive evidentiary burden that the nonmoving party must  
9 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477  
10 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual  
11 issues of controversy in favor of the nonmoving party only when the facts specifically  
12 attested by that party contradict facts specifically attested by the moving party. The  
13 nonmoving party may not merely state that it will discredit the moving party’s evidence  
14 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*  
15 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,  
16 nonspecific statements in affidavits are not sufficient, and missing facts will not be  
17 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89 (1990).

## 18 **B. Merits**

19       Astonishingly, Martinson has filed three briefs in support of his motion requesting  
20 dismissal of HP Tuners’s claims against him in his personal capacity *without citing a*  
21 *single authority* in support of his position as to the merits of any claim. Instead,  
22 Martinson engages in fact-by-fact counter arguments explaining why HP Tuners’s

1 alleged facts are either incorrect or misrepresentations. *See* Dkt. 193 at 2–11. Then  
2 Martinson argues that HP Tuners’s case against him is a house of cards without a single  
3 citation to any authority on the merits of any claim. *Id.* at 11–13. Martinson bears the  
4 burden of establishing that he is entitled to judgment as a matter of law. Fed. R. Civ. P.  
5 56(c). He has completely failed to make that showing. This does not mean that questions  
6 of fact exist to preclude summary judgment in his favor. It means that under Federal law,  
7 Washington law, and Illinois law, he simply fails to show that he is entitled to judgment  
8 in his favor at this time. The Court declines to go outside the record and research these  
9 laws, and most likely exceptions to these law, in order to assist Martinson in supporting  
10 his position. It is Martinson’s responsibility to show the Court why he is entitled to  
11 judgment, and three briefs without a single citation to substantive law fails to fulfill that  
12 responsibility.

#### 13 IV. ORDER

14 Therefore, it is hereby **ORDERED** that Martinson’s motion for summary  
15 judgment, Dkt. 183, is **DENIED**.

16 Dated this 18th day of May, 2020.

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19 BENJAMIN H. SETTLE  
20 United States District Judge  
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